

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

THE STATE OF TEXAS, et al.,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Civil Action No. 4:20-cv-00957-SDJ

PLAINTIFF STATES' ADVISORY REGARDING COORDINATION

Pursuant to the Court's directive at the February 15, 2024 hearing and subsequent Order (ECF no. 242) ("Order"), the Plaintiff States ("States")¹ have prepared the below information to set forth the protocol and process that have been and currently are in effect in the instant case. To the extent the Court would like a different process in place or Google requests assistance with additional coordination, the undersigned counsel and the Texas Attorney General's office (the "Lead State") will work to accommodate accordingly.

The following process has been modified over the course of the litigation as needed, including during the originally filed case in Texas, the initial and subsequent filings with the JPML, the MDL case in SDNY, the Second Circuit Court of Appeals, and now the instant case that has been remanded back to Your Honor's Court. The Lead State, together with the Lanier Law Firm, PLLC ("LLF") and Keller Postman LLC ("KP"), have continuously worked to coordinate communication amongst the States, monitor attendance on calls at Google's request, and coordinate discovery and other facets of this case as situations have arisen over the past several years. We have worked with Google throughout this process and will continue to do so.

There are 16 States and the Common Wealth of Puerto Rico in this litigation. As noted above, Texas is referred to herein as the Lead State in this case and all other states are referred to herein as the "Multistate" (as in Multistate coalition).

¹ The Plaintiff States include: Alaska, Arkansas, Florida, Idaho, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nevada, North Dakota, Puerto Rico, South Carolina, South Dakota, Utah, and Texas.

Ten states, including Texas, are represented by outside counsel. The other states are represented by their respective AG Offices. The specific representative relationships are outlined below in response to the Court's specific questions.

First, in the below Advisory, we list out responses to questions raised by the Court's Order regarding what states are represented by outside counsel versus the states that are represented only by their respective Attorneys General. Second, we provide information regarding communication, service of process, meetings and dissemination of information, meet and confers, court filings, and hearings.

1. The States that Outside Counsel represents:

LLF and KP represent the following 7 states collectively: Texas, Idaho, Indiana, Mississippi, North Dakota, South Carolina, South Dakota. (The Dugan Law Firm, APLC and Charlie Condon Law Firm, LLC also represent the State of South Carolina along with LLF.)

LLF also represents Louisiana, along with The Dugan Law Firm, APLC.

Please note that the Lead State is represented by LLF (Lead Counsel), KP (Co-Lead Counsel), and Norton Rose Fulbright LLP ("NRF") (Discovery Counsel). LLF, KP, and NRF are collectively referred to herein as "Outside Counsel." Although the Lead State is represented by Outside Counsel, representatives from the Lead State are present for hearings, meet and confers, and meetings with the Special Master. The Lead State is the liaison for the Multistate.

2. Representation of the Remaining States:

- a. Cooper & Kirk PLLC represents the State of Montana.
- b. HAUSFELD LLP represents the Common Wealth of Puerto Rico.
- c. The remaining seven States in the litigation are represented by their respective Attorneys General. Those states are: Alaska, Arkansas, Florida, Kentucky, Missouri, Nevada, and Utah.

3. Authority:

A. Filings:

As the Lead State, Texas has had authority to submit court filings for the States in EDTX (in 2019/2020/2023/2024), with the JPML (in 2021 and 2023), in the MDL/SDNY (in 2021, 2022, and 2023), and the Second Circuit Court of Appeals (2023). These filings were made through Outside Counsel.

The Lead State has the authority to make filings on behalf of the Multistate. For substantive filings such as briefs and motions practice, the Lead State seeks approval from the Multistate before filing and before adding a given state's name to the signature block.

Under some exceptional circumstances, there may not be time to obtain approval from each state in the Multistate before a filing is due. In such a circumstance, for non-dispositive motions practice, the Lead State has the authority to state the Multistate's positions on case developments, discovery, or issues that need to be discussed.

For more substantive issues and/or dispositive motions, when approval by each state was not able to be obtained, Outside Counsel files only on behalf of its clients and/or the Lead State to ensure Outside Counsel does not overstate its authority. In these instances, if supplemental state specific responses are necessary to fully inform the Court, the Multistate has been, and currently is, able to supplement these filings. Since December 16, 2020, supplemental filing has not been necessary.

In summary, the Lead State and Outside Counsel have the authority to make filings on behalf of the Multistate; however, dispositive motions and/or responses thereto must be approved by the Multistate before filing. If there is not time to obtain full approval for such filings, Outside Counsel files on behalf of its clients and/or the Lead State and specifically reserves the right of the other members of the Multistate to supplement if necessary.

It is important to note that in the past three years of motions practice in four venues, there has not been an issue or challenges from the Multistate regarding the Lead State's authority as it relates to the States' filings.

B. Communication and Representations:

1. Service and All-State Communication:

There is a listserv (the "Listserv") for service and communication with all 17 States and all outside counsel in this litigation. The Listserv is updated to conform to any staffing changes within the 17 States. The States have agreed that Google can send service notices to the Listserv and it will constitute service of process. Additionally, the Listserv can be used for notices by Google that it would like to schedule any meetings with the larger coalition of states.

2. Meetings and Dissemination of Information

For general calls with Google, including weekly data and discovery Meet and Confer calls with Google and the MDL Plaintiffs, a representative from Outside Counsel

attends along with a representative from the Lead State's Office of the Attorney General. When state specific issues arise the relevant state will join the call.

All communication with the MDL Plaintiffs (Discovery Steering Committee) is made by counsel from LLF and/or KP, as both were representatives on the Discovery Steering Committee when the case was part of the MDL.

Additionally, the Lead State, Outside Counsel, and the Multistate have weekly or bi-weekly calls whereby information is reported and shared amongst the States. Additional calls are scheduled as needed depending on case developments, deadlines and/or at the request of Google.

3. Court Appearances

Regarding court appearances, the Lead State and Outside Counsel have the authority to speak on behalf of the Multistate, with the caveat that Outside Counsel does not have the authority to bind an unrepresented Plaintiff State to drop or dismiss claims or agree to state-specific discovery commitments or representations that are specific to a given state. Additionally, as circumstances warrant counsel for the unrepresented Plaintiff States will attend hearings to speak as to state specific issues if warranted and helpful. That said, Outside Counsel has made an appearance for and spoken on behalf of the States at over a dozen court appearances in this case over the past three years, including hearings related to the following: Scheduling Orders, Discovery Orders, Rule 26f Conferences, Motion to Transfer Venue, motions in front of the JPML, motions in front of the Second Circuit, Motion to Dismiss, ESI, Coordination Order, Protective Order, and discovery in general.

4. Additional Actions the Multistate has Authorized the Lead State to Take on its Behalf:

In addition to the items discussed above, Outside Counsel can negotiate general discovery, case progression, deposition scheduling, production issues, privilege log issues, and generally discuss with Google any concerns Google has regarding discovery deficiency. The Lead State then communicates such information to the Multistate and organizes an omnibus response or discusses with the Multistate how the group would like to proceed in addressing any outstanding issues. Again, the Lead State and Outside Counsel cannot make representations for a non-represented Plaintiff State regarding its specific discovery position or specific claims unless given direct permission to do so.

5. Submissions to this Court or the Special Master on behalf of all Plaintiffs

The Lead State and Outside Counsel have authority to submit non-dispositive filings (motions and responses) to the Court and Special Master. In every instance when timing permits the Lead State will consult with and receive approval of all multistate members before submission. However, due to timing constraints, there may not always

be enough time for the Lead State to obtain approval by each state in the Multistate. In such instances the Lead State will submit the response and indicate whether supplementation by a member of the Multistate may be necessary. The Lead State is in constant communication with the Multistate and has worked to coordinate discovery responses and positions from the Multistate and submitted those positions when appropriate. However, if a State specific discovery issue arises the affected State will address that issue as needed and as permitted by the Court or Special Master. In that situation, the Lead State and Outside Counsel will coordinate with the State to ensure the State will be present for the Special Master and or the Court to address that issue or give its position and authority to the Lead State or Outside Counsel, whichever the Court or Special Master prefers and the situation warrants.

6. Agreements with Google:

The Lead State and Outside Counsel can make agreements with Google regarding ministerial, administrative and non-substantive procedural issues such as agreements on deadlines, extensions, scheduled meetings, scheduling Meet and Confers, coordination, topics for Court hearings or Special Master conferences, scheduling of depositions, use of court reporters, etc.

There is constant communication and coordination amongst the States in this litigation. The Lead State and Outside Counsel have continuously worked to coordinate with the Multistate over the past three years and facilitate the exchange of information and to work with Google's requests for coordination.

DATED: February 22, 2024

Respectfully submitted,

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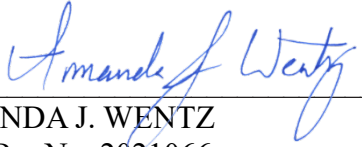
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CERTIFICATE OF SERVICE

I certify that on February 22, 2024, this document was filed electronically in compliance with Local Rule CV-5(a) and served on all counsel who have consented to electronic service, per Local Rule CV-5(a)(3)(A).

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